

Entered on Docket

October 04, 2011

GLORIA L. FRANKLIN, CLERK

U.S. BANKRUPTCY COURT

NORTHERN DISTRICT OF CALIFORNIA



Signed: October 04, 2011

EDWARD D. JELLEN
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re
ANDRONICO'S MARKETS, INC.,

Case No. 11-48963 EDJ
Chapter 11

Debtor./

MEMORANDUM

UFCW & Employers Benefit Trust Fund and UFCW-Northern California Employers Joint Pension Trust Fund (collectively, "UFCW Funds") has again moved for an order shortening time on a motion to allow and compel payment of a substantial administrative claim it holds. UFCW Funds requests that the matter be heard on or before October 13, 2011. The debtor opposed UFCW Funds's first such motion. The current motion is not opposed by the Creditors' Committee.

The motion alleges that unless the claim is paid before the closing of a proposed sale of the debtor's assets, the claim may not be paid. This is especially true, alleges UFCW Funds, if the

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proposed buyer, which holds a lien on the assets to be sold to secure a debt substantially in excess of the proposed purchase price, exercises its right to credit bid.

4 The court will deny the motion. The proposed buyer has the
5 right to credit bid under the Bankruptcy Code, Bankruptcy Code
6 § 363(k), and the law of the case.

More significantly, whether UFCW Funds's claim gets paid has nothing to do with the sale. Either there are or are not sufficient unencumbered assets in the estate to pay UFCW Funds's claim, if it is allowable. The closing of the sale will not change the amount of any such unencumbered assets.

Finally, if UFCW Funds's claim is undisputed, it may seek a stipulation from the debtor and the creditors' committee to its allowance. On the other hand, if the claim is disputed, the court is not going to conduct a rushed evidentiary trial of any disputed issues on October 13 for numerous reasons that should be obvious.

END OF ORDER

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